

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----X  
CHRISTOPHER TADDEO,

Plaintiff,  
- against -

**ANSWER TO THIRD-PARTY  
COMPLAINT**

NATIONAL RAILROAD PASSENGER  
CORPORATION, d/b/a AMTRAK, DMJM HARRIS,  
HI-TECH BREAKING, INC.,

08 CV 01561 (SHS)

Defendants.

-----X  
DMJM HARRIS,

Third-Party Plaintiff,

-against-

SKANSKA USA CIVIL NORTHEAST INC.,  
and ILLINOIS NATIONAL INSURANCE CO.,

Third-Party Defendants.

-----X.

Third-Party defendant SKANSKA USA CIVIL NORTHEAST INC. ("Skanska"), by its attorneys, Landman Corsi Ballaine & Ford P.C., hereby answers the Third-Party Complaint herein as follows:

**ANSWER AS TO PARTIES**

1. Skanska denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph "First" of the Third-Party Complaint.
2. Skanska denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph "Second" of the Third-Party Complaint.

3. Skanska denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph "Third" of the Third-Party Complaint except admits that Third-Party Defendant Skanska is a corporation with a place of business at 16-16 Whitestone Expressway, Whitestone, New York 11357.

4. Skanska denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph "Fourth" of the Third-Party Complaint.

5. Skanska denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph "Fifth" of the Third-Party Complaint.

**ANSWER AS TO JURISDICTION AND VENUE**

6. Skanska denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph "Sixth" of the Third-Party Complaint and refers all matters of all law to the Court.

7. Skanska denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph "Seventh" of the Third-Party Complaint and refers all matters of all law to the Court.

**ANSWER AS TO BACKGROUND**

8. Skanska denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph "Eighth" of the Third-Party Complaint.

9. Skanska denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph "Ninth" of the Third-Party Complaint.

10. Skanska denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph "Tenth" of the Third-Party Complaint and refers all matters

of all law to the Court.

11. Skanska denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph "Eleventh" of the Third-Party Complaint and refers all matters of all law to the Court.

12. Skanska denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph "Twelfth" of the Third-Party Complaint and refers all matters of all law to the Court.

**ANSWER AS TO THE FIRST CAUSE OF ACTION**

13. With respect to the allegations contained in paragraph "Thirteenth" of the Third-Party Complaint, Skanska repeats, reiterates and realleges each and every response contained in paragraphs "First" through "Twelfth" of this Answer with the same force and effect as if fully set forth at length herein.

14. Skanska denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph "Fourteenth" of the Third-Party Complaint and refers all matters of all law to the Court.

15. Skanska denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph "Fifteenth" of the Third-Party Complaint and refers all matters of all law to the Court.

16. Skanska denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph "Sixteenth" of the Third-Party Complaint and refers all matters of all law to the Court.

17. Skanska denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph "Seventeenth" of the Third-Party Complaint.

18. Skanska denies the truth of each and every allegation contained in paragraph "Eighteenth" of the Third-Party Complaint.

19. Skanska denies the truth of each and every allegation contained in paragraph "Eighteenth" of the Third-Party Complaint.

20. Skanska denies the truth of each and every allegation contained in paragraph "Eighteenth" of the Third-Party Complaint.

**ANSWER AS TO THE SECOND CAUSE OF ACTION**

21. With respect to the allegations contained in paragraph "Twenty-First" of the Third-Party Complaint, Skanska repeats, reiterates and realleges each and every response contained in paragraphs "First" through "Twenty" of this Answer with the same force and effect as if fully set forth at length herein.

22. Skanska denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph "Twenty-Second" of the Third-Party Complaint.

23. Skanska denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph "Twenty-Third" of the Third-Party Complaint.

24. Skanska denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph "Twenty-Fourth" of the Third-Party Complaint.

25. Skanska denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph "Twenty-Fifth" of the Third-Party Complaint.

26. Skanska denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph "Twenty-Sixth" of the Third-Party Complaint.

**FIRST AFFIRMATIVE DEFENSE**

27. Any injuries suffered by plaintiff were caused solely by his own negligence and not by any negligence of the defendants.

**SECOND AFFIRMATIVE DEFENSE**

28. Any injuries suffered by plaintiff were caused, in part, by his own negligence, and any recovery by plaintiff must be diminished in proportion to that part of his injuries attributable to his own negligence.

**THIRD AFFIRMATIVE DEFENSE**

29. Any injuries suffered by plaintiff were not caused by a negligent act or omission of defendants or any individual acting under its direction or control.

**FOURTH AFFIRMATIVE DEFENSE**

30. If plaintiff has sustained any damages in this matter, which defendant denies, then defendant's liability, if any, shall be limited in accordance with Article 16 of the New York Civil Practice Law and Rules.

**FIFTH AFFIRMATIVE DEFENSE**

31. Plaintiff failed to mitigate or otherwise act to lessen or reduce the damages alleged in the Complaint.

**SIXTH AFFIRMATIVE DEFENSE**

32. Skanska USA Civil Northeast Inc. is not a proper party to this action.

**SEVENTH AFFIRMATIVE DEFENSE**

33. The injuries allegedly sustained by plaintiff and/or third-party plaintiff was caused in whole or in part by the culpable conduct of plaintiff and/or third-party plaintiffs and/or co-defendants and/or other persons or entities over whom third-party defendant Skanska had or has no control.

**EIGHTH AFFIRMATIVE DEFENSE**

34. If plaintiff and/or third-party plaintiff have sustained any damages in this matter, the answering third-party defendant's liability, if any, which is expressly denied, shall be limited in accordance with Article 16, of the New York Civil Practice Law and Rules.

**NINTH AFFIRMATIVE DEFENSE**

35. Plaintiff and/or third-party plaintiff have failed to mitigate or otherwise act to lessen or reduce the damages alleged in the complaint.

**TENTH AFFIRMATIVE DEFENSE**

36. Third-Party Plaintiff's claims are barred by General Obligations Law §5-322.1.

**ELEVENTH AFFIRMATIVE DEFENSE**

37. Third-Party plaintiff's claims are barred by the New York State Workers' Compensation Laws.

**TWELFTH AFFIRMATIVE DEFENSE**

38. In the event plaintiff(s) recover a verdict or judgment against this third-party defendant, then said verdict or judgment must be reduced pursuant to CPLR 4545 (c) by those amounts which have been, or will, with reasonable certainty, replace or indemnify plaintiff(s), in whole or in part, for any past or future claimed economic loss, from any collateral source as insurance, social security, workers' compensation or employee benefit programs.

**THIRTEENTH AFFIRMATIVE DEFENSE**

39. This court does not have subject matter jurisdiction over this matter.

**WHEREFORE**, Third-Party Defendant SKANSKA USA CIVIL NORTHEAST INC. demands judgment dismissing the Third-Party Complaint herein, together with the costs and disbursements of this action.

Dated: New York, New York  
July 8, 2008

Respectfully submitted,

LANDMAN CORSI BALLAINE & FORD P.C.

By: 

Ronald E. Joseph (RJ9702)  
Attorneys for Defendants  
NATIONAL RAILROAD PASSENGER  
CORPORATION, HI-TECH BREAKING, INC.  
and SKANSKA USA CIVIL NORTHEAST INC.  
120 Broadway, 27th Floor  
New York, New York 10271-0079  
(212) 238-4800

TO: COLLERAN, O'HARA & MILLS, L.L.P.  
John Stackpole Groarke (JG-9031)  
Attorneys for Defendant/Third-Party Plaintiff  
DMJM+HARRIS, INC.  
1225 Franklin Avenue, Suite 450  
Garden City, New York 11530  
(516) 248-5757

Law Offices of MICHAEL FLYNN, PC  
Attorneys for Plaintiff  
1205 Franklin Avenue  
Garden City, NY 11530  
(516) 877-1234

**AFFIDAVIT OF SERVICE BY MAIL**

STATE OF NEW YORK     )  
                                      ) ss.:  
COUNTY OF NEW YORK    )

**TANYA KENNEDY**, being duly sworn, deposes and says, that deponent is not a party to the action, is over 18 years of age and resides at NEW YORK, NEW YORK.

That on the 9<sup>th</sup> day of July, 2008, deponent served the within  
**ANSWER TO THIRD-PARTY COMPLAINT**

upon

Law Offices of Michael Flynn, PC  
Attorneys for Plaintiff  
1205 Franklin Avenue  
Garden City, NY 11530

COLLERAN, O'HARA & MILLS, L.L.P.  
John Stackpole Groarke (JG-9031)  
Attorneys for Defendants/ Third Party  
Plaintiff DMJM+HARRIS, INC.  
1225 Franklin Avenue, Suite 450  
Garden City, New York 11530

attorneys in this action, at the addresses designated by said attorneys for that purpose by depositing a true copy of same enclosed in a postpaid properly addressed wrapper, in an official depository under the exclusive care and custody of the United States post office department within the State of New York.

  
\_\_\_\_\_  
Tanya Kennedy

Sworn to before me this  
9<sup>th</sup> day of July, 2008

  
\_\_\_\_\_  
Notary

JELENA BRIGIDA  
Notary Public, State of New York  
No. 01BR6156932  
Qualified in Kings County  
Commission Expires Dec. 4, 2010